

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

MARKET DOMINANT PRODUCT PRICES  
INBOUND MARKET DOMINANT MULTI-SERVICE AGREEMENTS  
WITH FOREIGN POSTAL OPERATORS  
AUSTRALIAN POSTAL CORPORATION - UNITED STATES  
POSTAL SERVICE BILATERAL AGREEMENT (MC2010-35)  
NEGOTIATED SERVICE AGREEMENT

Docket No.  
R2012-2

COMPETITIVE PRODUCT PRICES  
INBOUND COMPETITIVE MULTI-SERVICE AGREEMENTS WITH  
FOREIGN POSTAL OPERATORS  
AUSTRALIAN POSTAL CORPORATION – UNITED STATES  
POSTAL SERVICE BILATERAL AGREEMENT (MC2010-34)  
NEGOTIATED SERVICE AGREEMENT

Docket No.  
CP2012-1

**NOTICE OF UNITED STATES POSTAL SERVICE  
OF TRANSMITTAL OF AGREEMENT**  
(November 20, 2013)

The U.S. Postal Service (“Postal Service”) hereby files the following materials  
with the Postal Regulatory Commission (“Commission”)<sup>1</sup>:

- A copy of an amendment to the Australian Postal Corporation – United States Postal Service Bilateral Agreement originally filed in the above referenced dockets;
- An application for non-public treatment of portions of the amendment to the agreement under 39 C.F.R. § 3007.21.

This filing is conducted pursuant to 39 U.S.C. § 407(d)(2). Should the Postal Service execute negotiated service agreements to offer the parcel service described in the amendment, the Postal Service will undertake to prepare any necessary classification and rate filings with the Commission.

<sup>1</sup> Consistent with PRC Order No. 1806, Order Authorizing Market Test to Proceed and Granting Extension, PRC Docket No. MT2013-2 (Aug. 12, 2013) at 12, the Postal Service is linking these filings under 39 U.S.C. § 407(d)(2) to the dockets related to the same bilateral agreement.

Respectfully submitted,

UNITED STATES POSTAL SERVICE  
By its attorneys:

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November 20, 2013

## **APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR NON-PUBLIC TREATMENT OF MATERIALS**

In accordance with 39 C.F.R. § 3007.21, the United States Postal Service (Postal Service) hereby applies for non-public treatment of the enclosed Amendment Two To The Australian Postal Corporation — United States Postal Service Bilateral Agreement (Amendment). The Postal Service provides the Amendment to the Postal Regulatory Commission (Commission) in accordance with 39 U.S.C. § 407(d). The Amendment concerns the provision of certain services by the Postal Service and the Australian Postal Corporation (Australia Post) to Postal Service customers. As such, it constitutes a commercial agreement with an agency of a foreign government. The unredacted Amendment is being filed under seal, while a redacted copy is included as an enclosure to this transmittal. The Postal Service hereby furnishes the justification required for this application by 39 C.F.R. § 3007.21(c) below.

### **(1) The rationale for claiming that the materials are non-public, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);**

Information of a commercial nature, which under good business practice would not be publicly disclosed, as well as third party business information, is not required to be disclosed to the public. 39 U.S.C. § 410(c)(2); 5 U.S.C. § 552(b)(3) and (4). The Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment

competing in commercial markets. 39 U.S.C. § 504(g)(3)(A).<sup>1</sup> Because the portions of materials filed non-publicly fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their non-public treatment.

**(2) Identification, including name, phone number, and e-mail address for any third party who is known to have a proprietary interest in the materials, or if such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;**

In the case of agreements such as the one transmitted here, the Postal Service believes that the postal operator that has signed the document is the only third party with a proprietary interest in the materials. Due to the sensitive nature of the Postal Service's relationship with the affected foreign postal operator, the Postal Service proposes that a designated Postal Service employee serve as the point of contact for any notices. The Postal Service identifies as an appropriate contact person Ms. Lea Emerson, Executive Director, International Postal Affairs. Ms. Emerson's phone number is (202) 268-2574, and her email address is [lea.emerson@usps.gov](mailto:lea.emerson@usps.gov).<sup>2</sup>

The Postal Service has already informed the postal operator, in compliance with 39 C.F.R. § 3007.20(b), about the nature and scope of this filing

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<sup>1</sup> The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

<sup>2</sup> The Postal Service acknowledges that 39 C.F.R. § 3007.21(c)(2) appears to contemplate only situations where a third party's identification is "sensitive" as permitting the designation of a Postal Service employee who shall act as an intermediary for notice purposes. To the extent that the Postal Service's filing might be construed as beyond the scope of the Commission's rules, the Postal Service respectfully requests a waiver to designate a Postal Service employee as the contact person under these circumstances, for the reasons provided in the text above.



and about the postal operator's ability to address any confidentiality concerns directly with the Commission.

**(3) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are non-public;**

The Postal Service is transmitting an amendment to its bilateral contractual agreement with Australia Post concerning a new parcel service offering. The Amendment defines the terms and conditions under which the parties will provide this service.

The Postal Service maintains that the redacted portions of the documents should remain confidential. Some of the material redacted from the Amendment is marked because disclosure of it would enable a competitor to deduce the nature of redacted commercially sensitive information.

**(4) Particular identification of the nature and extent of commercial harm alleged and the likelihood of such harm;**

If the information that the Postal Service determined to be protected from disclosure due to its commercially sensitive nature were to be disclosed publicly, the Postal Service considers that it is quite likely that it would suffer commercial harm. This information is commercially sensitive, and the Postal Service does not believe that it would be disclosed under good business practices. Parcel delivery competitors in the United States could use the terms of the Amendment to negotiate more favorable terms for similar services with Australia Post or to provide a similar service independently, targeting Postal Service customers.

Moreover, the launch date of the service is anticipated, but not yet finalized. Until such time as all regulatory and statutory obligations have been

met, advance notice about the service could provide competitors information upon which they would act to pre-empt the Parties' efforts in the same commercial space. Additionally, should the Parties choose not to implement the service, there could be harm to the public insofar as customers may look forward to its introduction and be disappointed, harming the good relationships that both parties have with the public.

The Postal Service considers these to be highly probable outcomes that would result from public disclosure of the redacted material.

**(5) At least one specific hypothetical, illustrative example of each alleged harm;**

Harm: Parcel delivery competitors in the United States could use the terms of the Amendment to negotiate more favorable terms for similar services with the counterparty.

Hypothetical: The terms of the Amendment, including the manner in which the service is provided and the terms and conditions under which it is offered, are made public on the Commission's website. A competing U.S. parcel delivery provider reviews the information, which is information that would otherwise be unavailable. The competitor analyzes the information and approaches the counterparty with a proposal for it to provide it similar services. Because it has "inside" information, the competitor would be better prepared to negotiate with the counterparty, given the conditions under which the service were to be provided and would be better prepared to benchmark its negotiations.

Harm: U.S. parcel delivery competitors could use the information in the Amendment to offer U.S. merchants similar services to the detriment of both the Postal Service and Australia Post.

Hypothetical: The commercially confidential information contained in the Amendment is published on the Commission's website. U.S. or foreign parcel delivery service companies analyze the contract and determine, based on information in the contract and other reasonable business assumptions, how to compete against this particular offering before it is marketed to potential customers, or differentiate its own products or change the nature of its services to give them an appearance of being a better quality than the service contemplated in the instrument. As a result, this nascent service offering would suffer from potential diversion before it can mature in the marketplace.

Harm: Public disclosure causes customers to anticipate introduction of the service and have a negative view toward the Postal Service if the service is not ultimately offered.

Hypothetical: The Commission publishes the unredacted version of the Amendment on its website where customers interested in benefiting from the service become interested. Initially, these customers have a positive feeling toward the Postal Service. For operational, or other reasons, the service is not ultimately implemented. Because of the customers' raised expectations and anticipation, when this occurs, the customers become disappointed and have a negative view of the Postal Service for having "failed" to implement the service. This negatively impacts the Postal Service's good customer relationships and its brand, and it undermines the public view of the Postal Service as a business organization.

**(6) The extent of protection from public disclosure deemed to be necessary;**

The Postal Service maintains that the redacted portions of the materials filed non-publicly should be withheld from persons involved in competitive decision-making in the relevant market, as well as their consultants and attorneys, except for the foreign postal operator that is a party to the Amendment and that therefore already has access to this information. Additionally, the Postal Service believes that actual or potential customers of the Postal Service for similar products should not be provided access to the non-public materials.

**(7) The length of time deemed necessary for the non-public materials to be protected from public disclosure with justification thereof; and**

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless the Commission or its authorized representative enters an order extending the duration of that status. 39 C.F.R. § 3007.30.

**(8) Any other factors or reasons relevant to support the application.**

None.

***Conclusion***

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified materials.

**AMENDMENT TWO TO THE AUSTRALIAN POSTAL CORPORATION – UNITED STATES POSTAL  
SERVICE BILATERAL AGREEMENT**

This Amendment modifies the Agreement between the United States Postal Service (USPS) and Australia Postal Corporation (Australia Post) signed by the USPS on September 29, 2011, and by Australia Post on September 30, 2011 ("Bilateral Agreement"), pursuant to Article 18 of the Bilateral Agreement. The USPS and Australia Post may be referred to individually as a "Party" and together as the "Parties."

This Amendment modifies the Bilateral Agreement in the following ways:

1. Creation of new Annex 8 [REDACTED] The Parties thereafter agree to incorporate in the Bilateral Agreement this new Annex 8.
2. Amend Article 1 to add [REDACTED]
3. Australia Post acknowledges that United States law may require that this Agreement be filed with the U.S. Postal Regulatory Commission (Commission) and the U.S. Department of State. Australia Post authorizes the USPS to determine the scope of information that must be made publicly available under the Commission's rules. Australia Post further understands that any unredacted portion of this document may be posted on the Commission's public website, [www.prc.gov](http://www.prc.gov). In addition, the USPS may file information in connection with this agreement (including revenue, cost, or volume data) in other Commission dockets, including PRC docket numbers ACR2013, ACR2014, and ACR2015. Australia Post has the right, in accordance with the Commission's rules, to address its confidentiality concerns directly with the Commission. The procedure for making an application to the Commission for non-public treatment of materials believed to be protected from disclosure is found at Title 39, Code of Federal Regulations, Section 3007.22, on the Commission's website: [www.prc.gov/Docs/63/63467/Order225.pdf](http://www.prc.gov/Docs/63/63467/Order225.pdf).
4. This Amendment shall come into force on the later of the two dates on which it is signed by the Parties' representatives below, and it shall remain in effect for the same term as the Bilateral Agreement.
5. The Parties may execute this Amendment in one or more counterparts (including by facsimile or by electronic means such as .pdf format). Not all parties need be signatories to the same document. All counterpart signed documents shall be deemed an original and one instrument.

All other terms and conditions of the Agreement shall remain in force.

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IN WITNESS WHEREOF, the Parties agree to be bound as of the latest date of signature to the terms and conditions of this Amendment.

ON BEHALF OF THE AUSTRALIAN POSTAL CORPORATION

Signature: Kelly Heintz  
Name: KELLY HEINTZ  
Title: GENERAL MANAGER, PARCEL POST  
Date: 15/11/13

ON BEHALF OF THE U.S. POSTAL SERVICE

Signature: Michelle Valero  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: 11/20/2013

Annex 8 -

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**■** **RESEARCHER:** [redacted]

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SCHEDULE B TO ANNEX 8

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